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No. 297

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

J. A. TOBIN CONSTRUCTION COMPANY; ODESSA KREBS; EDMOND H. KREBS, JR.; LORENA LANE, nee Krebs; NAWATHA REDDING nee Krebs; JAQUITAH BAILEY, nee Krebs; and JOSEPH E. KREBS, Individually; and JOSEPH E. KREBS, As Executor of the Estate of Edmond H. Krebs, Deceased,

Petitioners,

VS.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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REPLY BRIEF

The government in its opposition brief has adopted the theory that although the condemnation proceeding was not filed until September 20, 1961, the condemnee was aware that such action would be filed several months previous to such date. That by reason of this knowledge the con-

demnee should be deprived of the improvements he placed on the land at a cost in excess of $33,000.

Petitioner submits that when this argument is exposed to reasoning, one can only conclude that the government is contending that petitioner should be punished for such conduct even at the expense of trampling on its constitutional rights under the "just compensation" clause.

The evidence in the present case does show that petitioner might have had constructive knowledge that the highway right of way would go through the quarry it was opening. The evidence fails to establish that petitioner had actual knowledge of such fact. But whether petitioner did or did not have such knowledge is completely irrelevant to the question of whether it should receive "just compensation" in a condemnation proceeding. If it were conceded that petitioner opened the quarry foolishly, insanely or deliberately, it is still entitled to "just compensation," or "reasonable market value, fairly determined."

Had the petitioner erected a building to house a restaurant to feed government workers, had it erected a warehouse to store its machinery, there probably would be no argument as to the right to be fully compensated. The fact that its expenditure did not build upwards in the form of a building but rather its expenditure was in the form of removing dirt and worthless rock in order to expose and quarry marketable rock, the improvement and increase in value to the real estate was no less, when it is valued as a rock quarry.

Petitioner respectfully submits that the government has now abandoned its attempt to sustain the judgment of the lower court on a constitutional basis, and now asks this court to inflict punishment on the petitioner because

in the opinion of some individual, "Tobin took a calculated risk . . . and . . . it lost."

We trust that a construction of the "just compensation" clause requires a more serious deliberation than this attitude.

Respectfully submitted,

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END